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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/559,680	12/06/2005	Serge Calamel	0512-1306	3014
466 7590 07/30/2007 YOUNG & THOMPSON 745 SOUTH 23RD STREET 2ND FLOOR ARLINGTON, VA 22202			EXAMINER SCHILLINGER, ANN M	
			ART UNIT 3738	PAPER NUMBER
			MAIL DATE 07/30/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

ED

**Office Action Summary**

Application No.

10/559,680

Applicant(s)

CALAMEL, SERGE

Examiner

Ann Schillinger

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☒ Other: Attachment A

**xDETAILED ACTION**

***Claim Objections***

Claim 28 is objected to because of the following informalities: this dependent claim requires a definite article at the beginning of the claim. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15-23, 27, and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Willi (U.S. Pat. No. 5,549,696). Willi discloses the following of claim 15: an acetabular implant cup insert for a joint prosthesis, the insert comprising a metal shell (2) and a polymer (col. 2, lines 52) lining (1) lining the inside space of said shell, a receptacle (1f) for a prosthetic head being formed in the lining, said shell presenting on its inside space means (4, 8) for preventing said lining being extracted from the shell and means for preventing the lining turning in the shell, wherein said means for preventing the lining being extracted comprise a stud (8) disposed on an end wall of the shell, said stud having at least one groove or lip (Attachment A) with which the lining interfits to lock the lining on the shell (col. 4, lines 10-59).

Willi discloses the limitations of claims 16-22 as shown in Attachment A.

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Willi discloses the following of claim 23: the insert according to claim 15, wherein the anterior portion of said shell presents a conical shape (as shown in Figure 2a).

Willi discloses the limitations of claims 27 and 28 in col. 1, lines 5-14, 20-26.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Willi in view of Noble et al. (U.S. Pat. No. 5,002,580). Willi does not teach the use of ceramics as a liner along the insert because ceramics are biologically inert and serve well as a bearing surface. Noble et al. teaches this in col. 9, lines 9-13. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use ceramics in the implant because they will not react badly in the patient's body while still providing a strong bearing surface.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Willi in view of Noiles (U.S. Pat. No. 4,678,472). The Willi reference discloses the structural limitations of the acetabular insert, but not how it is constructed and inserted. Noiles teaches claims 25 as follows: an insert according to claim 15, wherein said lining is obtained by an operation of thermocompressing said polymer in said inside space of the shell (col. 9, lines 20-26), followed by a machining operation (col. 9, lines 32-36). As

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described by Noiles, this process is well known in the art, and allows the liner to be fit properly to the outer shell before it is inserted. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use these techniques as a potential method of constructing and inserting the acetabular cup.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Willi in view of Fixel (U.S. Pat. No. 4,180,873). The Willi reference discloses the structural limitations of the acetabular insert, but not how it is constructed and inserted. Fixel teaches the method of inserting a previously shaped liner into the outer shell by impaction in col. 2, lines 18-25. This method provides a simpler means of constructing the acetabular cup before it is inserted into the patient. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use this technique as one of the many methods that are available for the construction and the insertion of the acetabular cup.

### *Response to Arguments*

In view of the amendments submitted on 4/25/2007, the objections towards claims 16-27 and the 35 USC § 112 rejection are withdrawn.

Applicant's arguments with respect to claims 15-23, 27, and 28 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed 4/25/2007 have been fully considered but they are not persuasive. Regarding claim 24, the Noble et al. reference states in col. 9, lines 9-13 that the implant may be made of "titanium, stainless steel, ceramics, polymers, or plastics and *may be multi-layer combinations thereof*. Therefore the reference teaches the use of linings and the rejection stands.

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Regarding claims 25 and 26, the Applicant contends that the reference combination does not properly describe the operation to obtain the lining. In the Noiles reference, the polymer at one temperature is utilized in its compressed state, and expanded under different temperature conditions, where it is subject to a machining process with the rest of the implant. The Applicant did not specify the order or details of these steps. As the claim is subject to the broadest reasonable interpretation, this reference still reads on the claims. In addition, the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation does not have to be given patentable weight.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ann Schillinger whose telephone number is (571) 272-6652. The examiner can normally be reached on Mon. thru Fri. 9 a.m. to 4 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ann Schillinger  
July 17, 2007

A. Stewart  
ALVIN J. STEWART  
PRIMARY EXAMINER

Attachment A

